

September 14, 1999

Richard C. Strasser
Assistant Director
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D. C. 20549
Mail Stop 10-1

Re: **File No. SR-NASD-99-45; Amendments to Interpretation
Governing Public Disclosure Program**

Dear Mr. Strasser:

Pursuant to Rule 19b-4, enclosed herewith is the above-numbered rule filing. Also enclosed is a 3-1/2" disk containing the rule filing in Microsoft Word 7.0 to facilitate production of the Federal Register release.

If you have any questions, please contact Mary Dunbar, Office of General Counsel, NASD Regulation, Inc., at (202) 728-8252; e-mail dunbarm@nasd.com. The fax number of the Office of General Counsel is (202) 728-8264.

Very truly yours,

Alden S. Adkins
Senior Vice President and General Counsel

Enclosure

File No. SR-NASD-99-45
Consists of 29 Pages

SECURITIES AND EXCHANGE COMMISSION

Washington, D. C.

Form 19b-4

Proposed Rule Change

by

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Pursuant to Rule 19b-4 under the
Securities Exchange Act of 1934

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 ("Act"), NASD Regulation, Inc. ("NASD Regulation") is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to amend Interpretive Material 8310-2 of the National Association of Securities Dealers, Inc. ("NASD" or "Association"), which governs the Public Disclosure Program. Under the Public Disclosure Program, NASD Regulation releases information regarding the employment and disciplinary history of NASD members and associated persons in response to requests from members of the public who identify an NASD member or an associated person with whom they may wish to do business; NASD Regulation does not charge the public for this service. The proposed rule change provides that information will be released on persons formerly associated with a member only for a two-year period following the termination of their registration with the NASD. The proposed rule change also clarifies NASD Regulation's policy for the release of information provided on Form U-6. Finally, NASD Regulation is including with this rule filing information about new policies for discontinuing the release of certain factually incorrect information through the Public Disclosure Program and automating the production of Public Disclosure Program reports. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

IM-8310-2. Release of Disciplinary Information

(a) [The Association shall, in response to a written inquiry, electronic inquiry, or telephonic inquiry via a toll-free telephone listing, release certain information contained in its files regarding the employment and disciplinary history of members and their associated persons,

including information regarding past and present employment history with Association members; all final disciplinary actions taken by federal, state, or foreign securities agencies or self-regulatory organizations that relate to securities or commodities transactions; all pending disciplinary actions that have been taken by federal or state securities agencies or self-regulatory organizations that relate to securities and commodities transactions and are required to be reported on Form BD or U-4 and all foreign government or self-regulatory organization disciplinary actions that relate to securities or commodities transactions and are required to be reported on Form BD or U-4; and all criminal indictments, informations or convictions that are required to be reported on Form BD or Form U-4. The Association will also release information required to be reported on Form BD or Form U-4 concerning civil judgments and arbitration decisions in securities and commodities disputes involving public customers, pending and settled customer complaints, arbitrations and civil litigation, current investigations involving criminal or regulatory matters, terminations of employment after allegations involving violations of investment-related statutes or rules, theft or wrongful taking of property, bankruptcies less than ten years old, outstanding judgments or liens, any bonding company denial, pay out or revocation, and any suspension or revocation to act as an attorney, accountant or federal contractor.]

In response to a written inquiry, electronic inquiry, or telephonic inquiry via a toll-free telephone listing, the Association shall release certain information contained in the Central Registration Depository regarding a current or former member, an associated person, or a person who was associated with a member within the preceding two years, through the Public Disclosure Program. Such information shall include:

(1) the person's employment history and other business experience required to be reported on Form U-4;

(2) currently approved registrations for the member or associated person;

(3) the main office, legal status, and type of business engaged in by the member;

and

(4) an event or proceeding—

(A) required to be reported under Item 23 on Form U-4;

(B) required to be reported under Item 11 on Form BD; or

(C) reported on Form U-6.

The Association also shall make available through the Public Disclosure Program certain arbitration decisions against a member involving a securities or commodities dispute with a public customer. The Association shall not release through the Public Disclosure Program social security numbers, residential history information, or physical description information, or information that the Association is otherwise prohibited from releasing under Federal law.

* * *

2. Procedures of the Self-Regulatory Organization

(a) The Board of Directors of NASD Regulation approved the proposed rule change and authorized its filing with the Commission at the NASD Regulation Board meetings on August 6, 1998, and March 24, 1999. The Nasdaq Stock Market Inc. has been provided an opportunity to consult with respect to the proposed rule change, pursuant to the Plan of Allocation and Delegation of Functions by the NASD to its Subsidiaries. The NASD Board of Governors had an opportunity to review the proposed rule change at its meetings on August 6, 1998, and March 25, 1999. No other action by the NASD is necessary for the filing of the proposed rule change.

Section 1(a)(ii) of Article VII of the NASD By-Laws permits the NASD Board of Governors to adopt amendments to NASD Rules without recourse to the membership for approval.

NASD Regulation proposes to make the rule change effective on or about 21 days after the date of SEC approval.

(b) Questions regarding this rule filing may be directed to Mary M. Dunbar, Associate General Counsel, NASD Regulation, Office of General Counsel, at (202) 728-8252.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

NASD Regulation's Public Disclosure Program is described in Interpretive Material 8310-2 of the NASD Rules ("the Interpretation"). Under the Public Disclosure Program, NASD Regulation releases to the public certain information reported on uniform forms¹ to the Central Registration Depository ("CRDSM") regarding the employment history and other business experience² and disciplinary history of NASD members and associated persons. The NASD's practice is and will continue to be to provide such information on a per associated person or per member basis. The primary purpose of the Public Disclosure Program is to help investors make informed choices about the individuals and firms with whom they may wish to do business.

NASD Regulation has determined that the Interpretation governing the Public Disclosure Program should be amended to ensure that disclosure practices are clearer and fairer to NASD

¹ The uniform forms are Form BD (the Uniform Application for Broker-Dealer Registration); Form BDW (the Uniform Request for Broker-Dealer Withdrawal); Form U-4 (the Uniform Application for Securities Industry Registration or Transfer); Form U-5 (the Uniform Termination Notice for Securities Industry Registration); and Form U-6 (the Uniform Disciplinary Action Reporting Form).

² Employment experience includes the last ten years of full- and part-time work, self-employment, military service, unemployment, and full-time education. The Form U-4 also requires registered persons to report certain other business experience on page 2 of the Form.

members, associated persons, and the public.³ The proposed rule change would affect only information released through the Public Disclosure Program. NASD Regulation is not proposing any change to the uniform forms or requesting authority to delete or change any information in CRD records that would require agreement from state regulators.

Persons Subject to the Interpretation

Since the inception of the Public Disclosure Program, NASD Regulation's practice has been to release information about a *current or former* member or associated person. The current Interpretation, however, refers to the release of information about "members" or "their associated persons," which the NASD By-Laws define as current members and persons currently associated with members.⁴ The Interpretation does not explicitly address the issue of disclosure regarding former members and associated persons.

The proposed rule change would explicitly address disclosure on former members and associated persons. Persons who would be subject to disclosure under the Program would include: (1) current and former NASD members; (2) persons currently associated with an NASD member; and (3) persons who have been associated with an NASD member within the preceding two years. NASD Regulation believes that it is inappropriate to continue public disclosure indefinitely for an individual who has chosen to leave the securities industry. Instead, NASD Regulation believes it should strike a balance between an investor's interest in being easily able to obtain information about a former associated person and that person's desire for privacy once he has left the securities industry. A two-year disclosure period coincides with the period in

³ To that end, the Interpretation has been reformatted to make it easier to read and understand. The Interpretation has been amended to conform to style and grammatical conventions followed in the NASD Rules, e.g., using singular nouns. In addition, certain words and phrases in the Interpretation have been conformed to usage in the uniform forms. All of these changes are clarifying, non-substantive amendments.

⁴ See Articles I(q) and (ee) of the NASD By-Laws.

which an individual can return to the industry without being required to requalify by examination and the period in which an individual remains subject to the jurisdiction of the Association.⁵

NASD Regulation notes, however, that, with the exception of Part II of the Form U-5 Internal Review Disclosure Reporting Page (DRP),⁶ there is currently no mechanism for a former associated person or member to submit information to amend or update a disclosure record.

Accordingly, NASD Regulation intends to clearly identify the scope of the disclosure information for former associated persons or members.

Release of Information Reported on Form U-6

NASD Regulation currently releases under the Public Disclosure Program those events and proceedings that are *required to be reported* on Form U-4 or BD. The Interpretation does not explicitly address events and proceedings reported on other uniform forms.

Until 1996, the NASD only released information actually reported on Form U-4 or BD. In 1996, the NASD proposed and the Commission approved a rule change that permitted the NASD to release information "required to be reported" on Form U-4 or BD.⁷ NASD Regulation proposed the change because in some instances, it possessed information about a currently registered person that should have been reported on the person's Form U-4, but the amended

⁵ See NASD Rules 1021(c) and 1031(c); NASD By-Laws Article IV, Section 4. Article IV, Section 4 of the By-Laws provides that a person whose association with a member has been terminated or revoked shall continue to be subject to the NASD's jurisdiction for certain specified purposes. Under that provision, the two-year period begins on the effective date of the termination, and may be extended under certain circumstances. For purposes of disclosure under the Public Disclosure Program, the two-year period would begin on the effective date of the termination and would not be extended. The effective date of termination is date that the Form U-5 is captured by the CRD system.

⁶ Part II of the Form U-5 Internal Review DRP provides a current or former registered representative an opportunity to provide a summary of the circumstances relating to an internal review reported on a Form U-5 by a former employer.

⁷ See Securities Exchange Act Release No. 37797 (Oct. 9, 1996); 61 FR 53984 (Oct. 16, 1996).

Form U-4 had not yet been submitted. NASD Regulation proposed the rule change so that it could release all information that it possessed that was required to be reported on the Forms U-4 and BD, even if the registered person or firm was not current in its filings, thereby ensuring that investors received more complete information.

For current members and associated persons, NASD Regulation interprets the "required to be reported" standard to include all information reported on Form U-4 or Form BD, as well as information that has been reported on a Form U-5 or Form U-6 that should be, but has not yet been, reported on a Form U-4 or Form BD.⁸ For example, a former employer of a currently registered representative may report a customer complaint against that registered representative by amending his Form U-5. NASD Regulation includes information about this complaint in any public disclosure report it issues about the registered representative, even if the current employer of the registered person has not updated his Form U-4 to reflect the complaint.

For former members and associated persons, the "required to be reported" standard has a different result because once an association or membership is terminated, there is no longer a *requirement to report* on Form U-4 or BD, respectively. Consequently, when NASD Regulation receives a public disclosure request for a former associated person or member, NASD Regulation releases all information reported to CRD *up to* the date of the termination of association or membership. However, events and proceedings reported on an initial or amended Form U-5 or BDW, or on Form U-6 *after* an individual has terminated his association or *after* termination of a firm's membership, are not released under the Program. If a former associated person or member

⁸ Form U-4 is filed by members on behalf of persons who are seeking to become registered or who are already registered with the member; it elicits, among other things, information regarding the person's employment history, as well as disciplinary information (including criminal charges and convictions, actions taken by self-regulatory organizations ("SROs") or other regulators, and customer complaints). Form U-5 is filed by a member whenever a registered person terminates employment; the member must report on the Form U-5 the reasons for the

reapplies and is approved for NASD registration or membership, NASD Regulation resumes public disclosure under the "required to be reported" standard, which includes releasing all information reported on any uniform form during any period of active or inactive registration or membership.

Under the proposed rule change, NASD Regulation would make disclosure of Form U-6 information more consistent between current members and associated persons and former members and associated persons by releasing information reported on Form U-6 for former members and associated persons, subject to the two-year time limitation discussed above. The rationale for this amendment is that information reported on Form U-6 is provided by regulators and SROs and therefore is highly reliable. Moreover, the information reported on Form U-6 may be particularly valuable to a public investor who has done business with a former member or associated person who has recently left the industry. By expanding the information released on former members and associated persons to include Form U-6 information, the Program will more closely match the relevant disciplinary information provided by the states, some of which currently release information reported on all uniform forms, whether or not it is currently reportable on a uniform form.

NASD Regulation does not release information that has been reported on a Form U-5 regarding former registered persons because that information may not have been reviewed by such individuals and may not, as a result, include their comments on, or concurrence with, the information.

registered person's termination. Form U-6 is used by states and SROs to report disciplinary actions taken against persons or entities that are or were registered, as well as persons and entities who have never been registered.

Release of Arbitration Decisions

For the convenience of investors, NASD Regulation makes available through the Public Disclosure Program information on awards rendered in the arbitration forum administered by the NASD that involve securities or commodities disputes between members and public customers. NASD Regulation also makes available through the Public Disclosure Program certain information provided to NASD Regulation on awards rendered in arbitration forums administered by other SROs that involve securities or commodities disputes between broker-dealers and public customers.

Clarification of Information Not Released Through Program

A number of members and associated persons have asked whether social security numbers, home addresses, or physical description information reported on the uniform forms are released through the Public Disclosure Program. NASD Regulation does not release such information, and the proposed rule change clarifies this policy.

The proposed rule change also clarifies that NASD Regulation will not release information through the Public Disclosure Program that it is otherwise prohibited from releasing under Federal law, e.g., criminal history record information provided by the Federal Bureau of Investigation.⁹ The criminal history information that is released through the Public Disclosure Program is the information provided by the associated person or the member on the uniform forms.

Discontinuing Release of Certain Factually Incorrect Information

NASD Regulation also would like to inform the Commission of NASD Regulation's intention to exercise discretion in discontinuing public disclosure of a limited category of

⁹ 28 C.F.R. 50.12(b) (1998).

factually incorrect information that may be contained in the CRD. NASD Regulation occasionally receives requests to expunge an event from CRD where the person who was the subject of the CRD filing can demonstrate that it was factually impossible for him to have been involved in the event (e.g., a person was named in an arbitration as a branch manager of a firm, and the person was working at a different firm at that time). NASD Regulation and the North American Securities Administrators Association ("NASAA") agree that such information can be expunged from the CRD if the person obtains a court order of expungement. However, obtaining a court order can be time-consuming and expensive. NASD Regulation believes that information that can be proven to be factually incorrect should be expunged from the CRD system without a court order and is discussing this issue with NASAA. NASD Regulation and NASAA also are currently discussing other circumstances in which expungement orders are appropriately honored.¹⁰ Until an agreement is reached with NASAA on expunging factually incorrect information from the CRD system, NASD Regulation intends to discontinue releasing such information via the Public Disclosure Program. NASD Regulation will develop guidelines to implement this policy. The policy will provide some measure of assurance that this type of factually incorrect information is not provided to investors or other members of the public.

Automation of Public Disclosure Reports

Currently, when NASD Regulation receives a public disclosure request, NASD Regulation staff reviews the CRD record of the subject of the request, identifies events that must be disclosed under the Interpretation, and manually prepares a summary report for the requester.

¹⁰ See Notices to Members 99-09 and 99-54.

With the deployment of Web CRD,¹¹ NASD Regulation's Internet-based registration system, the staff plans to discontinue the manual preparation of these reports. Instead, staff will use a computer program that automatically generates a report after drawing information directly from the Web CRD data base. The computer program will draw the information from specified fields in Web CRD that parallel fields on the Forms U-4, U-6, and BD (and Form U-5 in the limited circumstances discussed above). The report then will be sent by regular or electronic mail to the requester. This approach removes the NASD Regulation staff from the preparation of the reports, provides for consistent disclosure without manual intervention, and allows the information that is actually reported to Web CRD on the uniform forms to be reported to the public.

One significant consequence of this approach is that the automatically generated reports will include verbatim any comment submitted by a registered representative, firm, or regulator in response to the last question on the Disclosure Reporting Pages of the uniform forms. This question typically asks for a summary of the circumstances or details relating to the disclosure event. These comments are not currently included in the manual reports prepared by the staff and may contain customer names. They also may contain confidential account information or language that is offensive or potentially defamatory, although that is far less likely.

Because these comments have not been included previously in the manual reports, NASD Regulation does not intend to begin using these automated reports until the SEC approves this proposed rule change. Upon approval, NASD Regulation will inform members and registered persons via a Notice to Members and other communications that it is inappropriate, and may subject members to regulatory sanctions or civil liability, to submit offensive or potentially

¹¹ See SR-NASD-98-96, Securities Exchange Act Rel. No. 41326 (Apr. 22, 1999), 64 FR 23366 (Apr. 30,

defamatory language on the uniform forms. NASD Regulation also is considering developing electronic notices that would appear on the electronic screen when forms are being completed on-line advising Web CRD users of this issue. NASD Regulation would undertake to conduct a continuing program to educate members and registered persons on this issue.

After implementation of automated reports, NASD Regulation will address objections to disclosure of customer names, confidential customer information, or offensive or potentially defamatory language on a case-by-case basis as follows. After receiving an objection, NASD Regulation will identify the filer of the uniform form (i.e., a member firm, regulator, or self-regulatory organization) containing the language in controversy and notify the filer of the objections. NASD Regulation will provide the filer with the opportunity to amend the filing to remove the language in controversy. If the filer determines not to amend, NASD Regulation will apply a balancing test to weigh the value of the language in controversy for regulatory and investor protection purposes against the objector's asserted privacy rights and/or defamation claims.¹² Based on the outcome of this test, NASD Regulation may determine to redact the language in controversy from reports prepared under the Public Disclosure Program. NASD Regulation will inform any requester of a report that has been redacted of the reasons for the redaction. NASD Regulation staff anticipates that objections to disclosure will be infrequent. If objections are more frequent than anticipated, NASD Regulation staff will consider alternative approaches.

1999); SR-NASD-99-28.

¹² If it is impossible for a filer to amend, e.g., the firm is defunct and the person is no longer registered, then NASD Regulation also will apply the balancing test and proceed as described above.

Other

In Notice To Members 98-71, the NASD requested comment on whether public disclosure of certain non-investment-related crimes should be discontinued after ten years. In response, the NASD received nearly 100 comments. The NASD is still considering this issue in light of the comments, and therefore the issue is not addressed in this rule filing.

(b) Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Regulation believes that the proposed rule change is consistent with Section 15A(b)(6) because it strikes an appropriate balance between: (1) investors' interest in obtaining accurate and up-to-date information about current or former members or associated persons; and (2) members' and associated persons' interests in having accurate information provided through the Public Disclosure Program; and (3) former associated persons' interest in protecting their privacy after leaving the securities industry. By expanding the availability of Form U-6 information, the proposed rule change also will provide investors and the public with additional information about former associated persons with whom they have done business. NASD Regulation also believes that the proposed rule change is consistent in all respects with Section 15(A)(i),¹³ particularly the provision for immunity from liability for actions taken or omitted in good faith with respect to the Public Disclosure Program.

¹³ This Section requires the NASD to establish and maintain a public disclosure program.

4. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Exhibits

1. Completed notice of proposed rule change for publication in the Federal Register.

Pursuant to the requirements of the Securities Exchange Act of 1934, NASD Regulation has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

NASD REGULATION, INC.

BY: _____
Alden S. Adkins, Senior Vice President and General Counsel

Date: September 14, 1999

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-____; File No. SR-NASD-99-45)
September ____, 1999

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NASD Regulation, Inc. Relating to Amendments to Public Disclosure Program

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 14, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. SELF-REGULATORY ORGANIZATION'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

NASD Regulation is proposing to amend Interpretive Material 8310-2(a), which concerns the Public Disclosure Program. Additions are underlined; deletions are bracketed.

IM-8310-2. Release of Disciplinary Information

(a) [The Association shall, in response to a written inquiry, electronic inquiry, or telephonic inquiry via a toll-free telephone listing, release certain information contained in its files regarding the employment and disciplinary history of members and their associated persons, including information regarding past and present employment history with Association members; all final disciplinary actions taken by federal, state, or foreign securities agencies or self-regulatory organizations that relate to securities or commodities transactions; all pending

¹ 15 U.S.C. 78s(b)(1)

disciplinary actions that have been taken by federal or state securities agencies or self-regulatory organizations that relate to securities and commodities transactions and are required to be reported on Form BD or U-4 and all foreign government or self-regulatory organization disciplinary actions that relate to securities or commodities transactions and are required to be reported on Form BD or U-4; and all criminal indictments, informations or convictions that are required to be reported on Form BD or Form U-4. The Association will also release information required to be reported on Form BD or Form U-4 concerning civil judgments and arbitration decisions in securities and commodities disputes involving public customers, pending and settled customer complaints, arbitrations and civil litigation, current investigations involving criminal or regulatory matters, terminations of employment after allegations involving violations of investment-related statutes or rules, theft or wrongful taking of property, bankruptcies less than ten years old, outstanding judgments or liens, any bonding company denial, pay out or revocation, and any suspension or revocation to act as an attorney, accountant or federal contractor.]

In response to a written inquiry, electronic inquiry, or telephonic inquiry via a toll-free telephone listing, the Association shall release certain information contained in the Central Registration Depository regarding a current or former member, an associated person, or a person who was associated with a member within the preceding two years, through the Public Disclosure Program. Such information shall include:

- (1) the person's employment history and other business experience required to be reported on Form U-4;
- (2) currently approved registrations for the member or associated person;

(3) the main office, legal status, and type of business engaged in by the member;

and

(4) an event or proceeding—

(A) required to be reported under Item 23 on Form U-4;

(B) required to be reported under Item 11 on Form BD; or

(C) reported on Form U-6.

The Association also shall make available through the Public Disclosure Program certain arbitration decisions against a member involving a securities or commodities dispute with a public customer. The Association shall not release through the Public Disclosure Program social security numbers, residential history information, or physical description information, or information that the Association is otherwise prohibited from releasing under Federal law.

* * *

II. SELF-REGULATORY ORGANIZATION'S STATEMENT OF THE PURPOSE OF, AND STATUTORY BASIS FOR, THE PROPOSED RULE CHANGE

In its filing with the Commission, NASD Regulation included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD Regulation's Public Disclosure Program is described in Interpretive Material 8310-2 of the NASD Rules ("the Interpretation"). Under the Public Disclosure Program, NASD Regulation releases to the public certain information reported on uniform forms³ to the Central Registration Depository ("CRDSM") regarding the employment history and other business experience⁴ and disciplinary history of NASD members and associated persons. The NASD's practice is and will continue to be to provide such information on a per associated person or per member basis. The primary purpose of the Public Disclosure Program is to help investors make informed choices about the individuals and firms with whom they may wish to do business.

NASD Regulation has determined that the Interpretation governing the Public Disclosure Program should be amended to ensure that disclosure practices are clearer and fairer to NASD members, associated persons, and the public.⁵ The proposed rule change would affect only information released through the Public Disclosure Program. NASD Regulation is not proposing any change to the uniform forms or requesting authority to delete or change any information in CRD records that would require agreement from state regulators.

Persons Subject to the Interpretation

Since the inception of the Public Disclosure Program, NASD Regulation's practice has been to release information about a *current or former* member or associated person. The current

³ The uniform forms are Form BD (the Uniform Application for Broker-Dealer Registration); Form BDW (the Uniform Request for Broker-Dealer Withdrawal); Form U-4 (the Uniform Application for Securities Industry Registration or Transfer); Form U-5 (the Uniform Termination Notice for Securities Industry Registration); and Form U-6 (the Uniform Disciplinary Action Reporting Form).

⁴ Employment experience includes the last ten years of full- and part-time work, self-employment, military service, unemployment, and full-time education. The Form U-4 also requires registered persons to report certain other business experience on page 2 of the Form.

⁵ To that end, the Interpretation has been reformatted to make it easier to read and understand. The Interpretation has been amended to conform to style and grammatical conventions followed in the NASD Rules, e.g., using singular nouns. In addition, certain words and phrases in the Interpretation have been conformed to usage in the uniform forms. All of these changes are clarifying, non-substantive amendments.

Interpretation, however, refers to the release of information about "members" or "their associated persons," which the NASD By-Laws define as current members and persons currently associated with members.⁶ The Interpretation does not explicitly address the issue of disclosure regarding former members and associated persons.

The proposed rule change would explicitly address disclosure on former members and associated persons. Persons who would be subject to disclosure under the Program would include: (1) current and former NASD members; (2) persons currently associated with an NASD member; and (3) persons who have been associated with an NASD member within the preceding two years. NASD Regulation believes that it is inappropriate to continue public disclosure indefinitely for an individual who has chosen to leave the securities industry. Instead, NASD Regulation believes it should strike a balance between an investor's interest in being easily able to obtain information about a former associated person and that person's desire for privacy once he has left the securities industry. A two-year disclosure period coincides with the period in which an individual can return to the industry without being required to requalify by examination and the period in which an individual remains subject to the jurisdiction of the Association.⁷ NASD Regulation notes, however, that, with the exception of Part II of the Form U-5 Internal Review Disclosure Reporting Page (DRP),⁸ there is currently no mechanism for a former associated person or member to submit information to amend or update a disclosure record.

⁶ See Articles I(q) and (ee) of the NASD By-Laws.

⁷ See NASD Rules 1021(c) and 1031(c); NASD By-Laws Article IV, Section 4. Article IV, Section 4 of the By-Laws provides that a person whose association with a member has been terminated or revoked shall continue to be subject to the NASD's jurisdiction for certain specified purposes. Under that provision, the two-year period begins on the effective date of the termination, and may be extended under certain circumstances. For purposes of disclosure under the Public Disclosure Program, the two-year period would begin on the effective date of the termination and would not be extended. The effective date of termination is date that the Form U-5 is captured by the CRD system.

Accordingly, NASD Regulation intends to clearly identify the scope of the disclosure information for former associated persons or members.

Release of Information Reported on Form U-6

NASD Regulation currently releases under the Public Disclosure Program those events and proceedings that are *required to be reported* on Form U-4 or BD. The Interpretation does not explicitly address events and proceedings reported on other uniform forms.

Until 1996, the NASD only released information actually reported on Form U-4 or BD. In 1996, the NASD proposed and the Commission approved a rule change that permitted the NASD to release information "required to be reported" on Form U-4 or BD.⁹ NASD Regulation proposed the change because in some instances, it possessed information about a currently registered person that should have been reported on the person's Form U-4, but the amended Form U-4 had not yet been submitted. NASD Regulation proposed the rule change so that it could release all information that it possessed that was required to be reported on the Forms U-4 and BD, even if the registered person or firm was not current in its filings, thereby ensuring that investors received more complete information.

For current members and associated persons, NASD Regulation interprets the "required to be reported" standard to include all information reported on Form U-4 or Form BD, as well as information that has been reported on a Form U-5 or Form U-6 that should be, but has not yet been, reported on a Form U-4 or Form BD.¹⁰ For example, a former employer of a currently

⁸ Part II of the Form U-5 Internal Review DRP provides a current or former registered representative an opportunity to provide a summary of the circumstances relating to an internal review reported on a Form U-5 by a former employer.

⁹ See Securities Exchange Act Release No. 37797 (Oct. 9, 1996); 61 FR 53984 (Oct. 16, 1996).

¹⁰ Form U-4 is filed by members on behalf of persons who are seeking to become registered or who are already registered with the member; it elicits, among other things, information regarding the person's employment history, as well as disciplinary information (including criminal charges and convictions, actions taken by self-regulatory organizations ("SROs") or other regulators, and customer complaints). Form U-5 is filed by a member

registered representative may report a customer complaint against that registered representative by amending his Form U-5. NASD Regulation includes information about this complaint in any public disclosure report it issues about the registered representative, even if the current employer of the registered person has not updated his Form U-4 to reflect the complaint.

For former members and associated persons, the "required to be reported" standard has a different result because once an association or membership is terminated, there is no longer a *requirement to report* on Form U-4 or BD, respectively. Consequently, when NASD Regulation receives a public disclosure request for a former associated person or member, NASD Regulation releases all information reported to CRD *up to* the date of the termination of association or membership. However, events and proceedings reported on an initial or amended Form U-5 or BDW, or on Form U-6 *after* an individual has terminated his association or *after* termination of a firm's membership, are not released under the Program. If a former associated person or member reapplies and is approved for NASD registration or membership, NASD Regulation resumes public disclosure under the "required to be reported" standard, which includes releasing all information reported on any uniform form during any period of active or inactive registration or membership.

Under the proposed rule change, NASD Regulation would make disclosure of Form U-6 information more consistent between current members and associated persons and former members and associated persons by releasing information reported on Form U-6 for former members and associated persons, subject to the two-year time limitation discussed above. The rationale for this amendment is that information reported on Form U-6 is provided by regulators and SROs and therefore is highly reliable. Moreover, the information reported on Form U-6 may

whenever a registered person terminates employment; the member must report on the Form U-5 the reasons for the

be particularly valuable to a public investor who has done business with a former member or associated person who has recently left the industry. By expanding the information released on former members and associated persons to include Form U-6 information, the Program will more closely match the relevant disciplinary information provided by the states, some of which currently release information reported on all uniform forms, whether or not it is currently reportable on a uniform form.

NASD Regulation does not release information that has been reported on a Form U-5 regarding former registered persons because that information may not have been reviewed by such individuals and may not, as a result, include their comments on, or concurrence with, the information.

Release of Arbitration Decisions

For the convenience of investors, NASD Regulation makes available through the Public Disclosure Program information on awards rendered in the arbitration forum administered by the NASD that involve securities or commodities disputes between members and public customers. NASD Regulation also makes available through the Public Disclosure Program certain information provided to NASD Regulation on awards rendered in arbitration forums administered by other SROs that involve securities or commodities disputes between broker-dealers and public customers.

Clarification of Information Not Released Through Program

A number of members and associated persons have asked whether social security numbers, home addresses, or physical description information reported on the uniform forms are released through the Public Disclosure Program. NASD Regulation does not release such

registered person's termination. Form U-6 is used by states and SROs to report disciplinary actions taken against

information, and the proposed rule change clarifies this policy.

The proposed rule change also clarifies that NASD Regulation will not release information through the Public Disclosure Program that it is otherwise prohibited from releasing under Federal law, e.g., criminal history record information provided by the Federal Bureau of Investigation.¹¹ The criminal history information that is released through the Public Disclosure Program is the information provided by the associated person or the member on the uniform forms.

Discontinuing Release of Certain Factually Incorrect Information

NASD Regulation also would like to inform the Commission of NASD Regulation's intention to exercise discretion in discontinuing public disclosure of a limited category of factually incorrect information that may be contained in the CRD. NASD Regulation occasionally receives requests to expunge an event from CRD where the person who was the subject of the CRD filing can demonstrate that it was factually impossible for him to have been involved in the event (e.g., a person was named in an arbitration as a branch manager of a firm, and the person was working at a different firm at that time). NASD Regulation and the North American Securities Administrators Association ("NASAA") agree that such information can be expunged from the CRD if the person obtains a court order of expungement. However, obtaining a court order can be time-consuming and expensive. NASD Regulation believes that information that can be proven to be factually incorrect should be expunged from the CRD system without a court order and is discussing this issue with NASAA. NASD Regulation and NASAA also are currently discussing other circumstances in which expungement orders are appropriately

persons or entities that are or were registered, as well as persons and entities who have never been registered.
¹¹ 28 C.F.R. 50.12(b) (1998).

honored.¹² Until an agreement is reached with NASAA on expunging factually incorrect information from the CRD system, NASD Regulation intends to discontinue releasing such information via the Public Disclosure Program. NASD Regulation will develop guidelines to implement this policy. The policy will provide some measure of assurance that this type of factually incorrect information is not provided to investors or other members of the public.

Automation of Public Disclosure Reports

Currently, when NASD Regulation receives a public disclosure request, NASD Regulation staff reviews the CRD record of the subject of the request, identifies events that must be disclosed under the Interpretation, and manually prepares a summary report for the requester. With the deployment of Web CRD,¹³ NASD Regulation's Internet-based registration system, the staff plans to discontinue the manual preparation of these reports. Instead, staff will use a computer program that automatically generates a report after drawing information directly from the Web CRD data base. The computer program will draw the information from specified fields in Web CRD that parallel fields on the Forms U-4, U-6, and BD (and Form U-5 in the limited circumstances discussed above). The report then will be sent by regular or electronic mail to the requester. This approach removes the NASD Regulation staff from the preparation of the reports, provides for consistent disclosure without manual intervention, and allows the information that is actually reported to Web CRD on the uniform forms to be reported to the public.

One significant consequence of this approach is that the automatically generated reports will include verbatim any comment submitted by a registered representative, firm, or regulator in

¹² See Notices to Members 99-09 and 99-54.

¹³ See SR-NASD-98-96, Securities Exchange Act Rel. No. 41326 (Apr. 22, 1999), 64 FR 23366 (Apr. 30, 1999); SR-NASD-99-28.

response to the last question on the Disclosure Reporting Pages of the uniform forms. This question typically asks for a summary of the circumstances or details relating to the disclosure event. These comments are not currently included in the manual reports prepared by the staff and may contain customer names. They also may contain confidential account information or language that is offensive or potentially defamatory, although that is far less likely.

Because these comments have not been included previously in the manual reports, NASD Regulation does not intend to begin using these automated reports until the SEC approves this proposed rule change. Upon approval, NASD Regulation will inform members and registered persons via a Notice to Members and other communications that it is inappropriate, and may subject members to regulatory sanctions or civil liability, to submit offensive or potentially defamatory language on the uniform forms. NASD Regulation also is considering developing electronic notices that would appear on the electronic screen when forms are being completed online advising Web CRD users of this issue. NASD Regulation would undertake to conduct a continuing program to educate members and registered persons on this issue.

After implementation of automated reports, NASD Regulation will address objections to disclosure of customer names, confidential customer information, or offensive or potentially defamatory language on a case-by-case basis as follows. After receiving an objection, NASD Regulation will identify the filer of the uniform form (i.e., a member firm, regulator, or self-regulatory organization) containing the language in controversy and notify the filer of the objections. NASD Regulation will provide the filer with the opportunity to amend the filing to remove the language in controversy. If the filer determines not to amend, NASD Regulation will apply a balancing test to weigh the value of the language in controversy for regulatory and

investor protection purposes against the objector's asserted privacy rights and/or defamation claims.¹⁴ Based on the outcome of this test, NASD Regulation may determine to redact the language in controversy from reports prepared under the Public Disclosure Program. NASD Regulation will inform any requester of a report that has been redacted of the reasons for the redaction. NASD Regulation staff anticipates that objections to disclosure will be infrequent. If objections are more frequent than anticipated, NASD Regulation staff will consider alternative approaches.

Other

In Notice To Members 98-71, the NASD requested comment on whether public disclosure of certain non-investment-related crimes should be discontinued after ten years. In response, the NASD received nearly 100 comments. The NASD is still considering this issue in light of the comments, and therefore the issue is not addressed in this rule filing.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Regulation believes that the proposed rule change is consistent with Section 15A(b)(6) because it strikes an appropriate balance between: (1) investors' interest in obtaining accurate and up-to-date information about current or former members or associated persons; and (2) members' and associated persons' interests in having accurate information provided through the Public Disclosure Program; and (3) former associated persons' interest in protecting their privacy after

¹⁴ If it is impossible for a filer to amend, e.g., the firm is defunct and the person is no longer registered, then

leaving the securities industry. By expanding the availability of Form U-6 information, the proposed rule change also will provide investors and the public with additional information about former associated persons with whom they have done business. NASD Regulation also believes that the proposed rule change is consistent in all respects with Section 15(A)(i),¹⁵ particularly the provision for immunity from liability for actions taken or omitted in good faith with respect to the Public Disclosure Program.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. DATE OF EFFECTIVENESS OF THE PROPOSED RULE CHANGE AND TIMING FOR COMMISSION ACTION

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

NASD Regulation also will apply the balancing test and proceed as described above.

¹⁵ This Section requires the NASD to establish and maintain a public disclosure program.

IV. SOLICITATION OF COMMENTS

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-99-45 and should be submitted by [insert date 21 days from the date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Jonathan G. Katz
Secretary

¹⁶ 17 CFR 200.30-3(a)(12).